

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	File No. BPCT-940630KG
CORPORATION)	
)	
For Construction Permit for a New)	
Television Station to Operate on)	
Channel 51, Reading, Pennsylvania)	
)	

To: Administrative Law Judge
Richard L. Sippel

MASS MEDIA BUREAU'S OPPOSITION TO
REQUEST FOR PERMISSION TO FILE APPEAL

1. On October 22, 1999, Reading Broadcasting, Inc. ("RBI") filed a request for permission to file appeal ("RBI Request"). RBI seeks permission to appeal a Memorandum Opinion and Order, FCC 99M-61, released October 15, 1999 ("MO&O-2"). In that decision, the presiding Administrative Law Judge ("ALJ") modified a prior Memorandum Opinion and Order, FCC 99M-49, released September 3, 1999 ("MO&O-1") and added the following issue:

To determine whether Micheal L. Parker engaged in a pattern of misrepresentation and/or lack of candor in failing to advise the Commission of the actual nature and scope of his previously adjudicated misconduct and, if so, the effect of such misrepresentation and/or lack of candor on Reading's qualifications to remain a licensee.

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By Order, FCC 99M-66, released October 27, 1999, the presiding ALJ requested that Adams Communications Corporation (“Adams”) and the Mass Media Bureau (“Bureau”) file responsive comments by November 3, 1999. In accordance with the Order, the Bureau submits the following opposition to the RBI Request.

2. Background. By a motion to enlarge issues filed July 15, 1999 (“Adams Motion”), Adams sought to add two issues to this proceeding. The first was whether, in light of adjudicated misconduct concerning RBI’s “dominant principal and controlling stockholder,” Micheal Parker (“Parker”), RBI was qualified to remain a licensee. The second was whether Parker engaged in a pattern of misrepresentation and/or lack of candor by repeatedly failing to advise the Commission of the actual nature and scope of previously adjudicated misconduct and, if so, the effect of such on RBI’s qualifications to remain a licensee. The representations referenced in the second requested issue had been made in applications that had been filed by entities, including RBI, in which Parker had a substantial or controlling interest.

3. In MO&O-1, the presiding ALJ denied the Adams Motion and declined to add either requested issue. MO&O-1 concluded that the Adams Motion did not contain specific allegations of fact necessary to support addition of the issues. In particular, with respect to the second requested issue, MO&O-1 framed the argument for adding the issue as whether Parker went far enough in “describing the contents of adjudicatory documents that were known to the Bureau staff to exist at a time when Parker was seeking a license.” MO&O-1 at ¶ 17. The “adjudicatory documents” in question referred to two decisions which discussed Parker, Religious Broadcasting Network, 3 FCC Rcd 4085, 4090 (Rev. Bd. 1988) (“Religious”) and Mt. Baker Broadcasting Co., Inc., 3 FCC Rcd 4777 (1988)

(“Mt. Baker”). MO&O-1 concluded that those decisions had been sufficiently identified by the applicants/Parker “to have been timely located and considered by the Bureau before” the grant of any of the applications. Each decision had been identified by its document number, not the citation required by Section 1.14 of the Commission’s Rules. MO&O-1 concluded that the absence of citations in the descriptions supplied by the applicants/Parker was not significant. In this regard, MO&O-1 opined that it was reasonable to infer that the Bureau’s staff was aware of the adverse findings concerning Parker because of the awareness about Parker subsequently displayed in two 1997 decisions.¹ MO&O-1 further opined that Parker’s disclosure about his “having been found to be an undisclosed real party-in-interest would alone be sufficient to raise a serious question about his basic qualifications.” *Id.* at ¶ 20. MO&O-1 concluded that it was speculative to posit that Parker had an intent to deceive and that, in any event, there was no reasonable ability for Parker to deceive the Bureau.

4. On September 13, 1999, Adams filed a request for permission to file an appeal of MO&O-1. The Bureau, by a pleading filed September 27, 1999, supported Adams to the extent that the Bureau advocated a modification of MO&O-1 and addition of the second issue requested by Adams. RBI opposed Adams’ request in its entirety.

5. After considering the parties’ arguments, the presiding ALJ issued MO&O-2. Therein, it was concluded that Parker had made incomplete disclosures relative to his descriptions of the Religious and Mt. Baker decisions. Further, MO&O-2, citing Citizens

¹ See Two If By Sea Broadcasting Corporation, 12 FCC Rcd 2254 (1997) (“TIBS”) (subsequent history omitted); May 22, 1997, letter to Alan C. Campbell, Esquire, from Barbara A. Kreisman, Chief, Video Services Division (“Norwell Letter”). Each decision acknowledged that serious allegations related to the Religious and Mt. Baker decisions had been made against Parker.

for Jazz on WRVR, Inc. v. FCC, 775 F.2d 392, 395 (D.C. Cir. 1985) (“Citizens for Jazz”) and Leflore Broadcasting Co., Inc. v. FCC, 636 F.2d 454, 462 (D.C. Cir. 1980), indicated that the totality of the circumstances raised substantial questions, including questions about Parker’s intent. In determining that substantial questions concerning Parker’s intent existed, MO&O-2 found significant “the Bureau’s stated belief that it was misled by Parker’s nondisclosures and that as a result, the Bureau granted the assignments.” MO&O-2 at ¶ 18.

6. Discussion. Section 1.301(b) of the Commission’s Rules provides that an appeal from an interlocutory ruling such as the one under consideration can occur only if allowed by the presiding ALJ. The request to allow an appeal must “contain a showing that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception.” Should the presiding ALJ determine that an interlocutory appeal is justified, he may either allow the appeal or modify the underlying ruling. Because the RBI Request neither presents a new or novel question of law or policy nor will warrant a remand should the appeal be deferred, it should be denied. Moreover, the Bureau submits that the ultimate decision of the underlying ruling, *i.e.*, addition of the issue, should not be modified.

7. At the outset, RBI contends that it is being called upon to defend itself against an improperly added issue. In this regard, RBI asserts that the Adams Motion failed to

meet the standards required for adding an issue.² RBI reasons that addition of the issue evidences establishment of a new law or novel Commission policy warranting Commission review.

8. The Bureau disagrees. MO&O-2 did nothing more than determine that, on the basis of the pleadings, a substantial and material question of fact regarding RBI's character has been raised. In this regard, the Bureau concurs with MO&O-2 that the totality of the circumstances surrounding Parker's submissions raises substantial and material questions of fact about his candor, which should be resolved at the hearing. *See Citizens for Jazz, supra*. RBI may believe that the available evidence is insufficient to raise a substantial question of fact. However, it points to no case (and the Bureau is

² The RBI Request also addresses perceived deficiencies in the Bureau's comments that were filed in connection with the Adams Motion. In this regard, RBI observes (accurately) that "there is no affirmative statement by the Bureau that it or the Commission's processing staff was, in fact, misled." RBI Request at pp. 4-5. Rather, RBI notes that the Bureau had stated that "the key question is whether the descriptions as a whole fairly apprised the staff and any casual reader that they should read the referenced decisions and thereby gain a better appreciation of Parker's activities before making licensing decisions. In the Bureau's view, they did not." RBI Request at p. 4, quoting the Bureau's September 27, 1999, Comments at ¶ 7. RBI argues that MO&O-2 committed egregious error by concluding that the Bureau's comment rose to the level of "an affirmation regarding what actually occurred for the purpose of finding that a substantial question of fact has been raised." RBI Request at p. 5. In this regard, RBI notes (again accurately) that the Bureau did not submit any affidavits from staff that had processed the referenced applications. Thus, RBI appears to contend that the Adams Motion should fail because, *inter alia*, the Bureau did not furnish affidavits alleging that it was deceived by Parker's apparently disingenuous filings.

Suffice it to say the Bureau only undertook to comment on the sufficiency of the Adams Motion and opine whether or not the requested issues should be added. The Bureau did not state, nor did it intend to state, what it would have done in 1989, 1991 and/or 1992 had Parker provided complete and accurate descriptions of the Religious and Mt. Baker decisions. Hence, the absence of affidavits from the Bureau's pleading should play no role in any ruling as to whether Parker may have deceived the Bureau. *See Trinity Broadcasting of Florida, Inc.*, FCC 98-313, released April 15, 1999, at ¶¶ 94-100, and 117-125, *appeal pending* (The significant facts concern what the applicants' disclosed in light of what they knew at the time of the disclosures, not what the Bureau did or did not do.).

aware of none) that suggests that the ALJ lacks the authority to add the issue or that the issue as framed reflects a departure from established law or policy. Moreover, even if MO&O-2 is based in part on an assumption that the Bureau was deceived, the crucial point is not that the Bureau may have been deceived but that Parker's disclosures were misleadingly inaccurate and incomplete.

9. Next, RBI contends that the cases cited in MO&O-2 do not support addition of the requested issue. In this regard, RBI appears to believe that MO&O-2 did not adequately consider whether the Adams Motion made a sufficient showing that Parker had an intent to deceive. According to RBI, there is no proof that Parker knew that the application representations were false. Indeed, RBI asserts, "the evidence on the record fully supports the inference that Parker's belief was that the information presented was true."³ RBI Request at p. 9. RBI also points out that the document numbers (as opposed to the citations which were not provided) referenced in the applications at issue were accurate and argues that such accuracy negates an inference that Parker sought to deceive.

10. Again, the Bureau disagrees. Specifically, the cases cited in MO&O-2, which RBI believes that ruling improperly relied upon, all reflect that an intent to deceive is an essential element of deceit. The Bureau wholeheartedly agrees with that proposition. A number of those cases determined, however, that the record therein did not support a conclusion that an intent to deceive had been proven because, *inter alia*, the party under

³ Aside from the fact that Parker signed the applications in question, thereby certifying to their accuracy, the Bureau is unable to verify the existence of any such evidence. In this regard, the Bureau notes that Parker had but did not take either in RBI's opposition to the Adams Motion or in RBI's reply to the Bureau's comments the opportunity to explain the circumstances surrounding the preparation of the exhibits believed deceptive by Adams and the Bureau.

scrutiny had disclosed the information which it was later charged with attempting to conceal. In the instant case, the problem is that there is an apparent difference between what Parker disclosed and what he should have disclosed, coupled with an apparent motive for not revealing damaging information.⁴

11. In the applications referenced in the Adams Motion, Parker reported dismissals of various applications, including those referenced in the Religious and Mt. Baker decisions. However, in those descriptions, Parker did not indicate that either proceeding was tainted by deceit attributable to him. Indeed, Parker's descriptions provided no basis for anyone to look beyond the mere fact of the applications' dismissals. It now appears to the Bureau that, in so doing, Parker clearly sought to foreclose inquiry into his past. This is no mere quibble. Applicants have a basic duty of candor, a duty that is not met by concealing the unpleasant or the inconvenient. *See Trinity Broadcasting of Florida, Inc., supra* at ¶ 97. In light of all the circumstances, it appears that Parker breached that duty repeatedly. In this regard, the difference between what Parker chose to reveal and what the Review Board and the Commission wrote about the Religious and Mt. Baker applicant's apparent deceptions is so stark that an inference arises that Parker's incomplete descriptions of those decisions were the result of deceit. *See also, Chameleon Radio Corporation*, 13 FCC Rcd 13549 (1998), *petition for reconsideration pending*. It remains to be seen whether Parker has an adequate explanation for his inadequate disclosures.

⁴ In this regard, the Bureau agrees with the Adams Motion that Parker's intent can be inferred from a self-evident motive; namely, securing grants that can later serve as grounds for arguing that the Commission has determined on multiple occasions that Parker is fully qualified to be a Commission licensee.

12. Finally, RBI argues that the requested issue should not be added because the substance of that issue has been before the Commission on three occasions. More particularly, RBI contends that the issue of alleged misrepresentation by Parker was actually addressed in the TIBS decision and the Norwell Letter. Thus, according to RBI, the failure of the Hearing Designation Order in this proceeding (“HDO”) to specify the requested issue resulted from a deliberate decision on the part of the Bureau not to do so.

13. Once again, the Bureau disagrees. Most importantly, RBI points to no particular holding or language in either document -- because no such language exists -- which establishes that the specific matter now under consideration was ruled upon.

14. With respect to TIBS, it is clear that the issue of alleged misrepresentation was raised. In this regard, the TIBS decision notes:

“With respect to Parker, SBH notes that although applications with which he has been associated have been granted, in those applications he lacked candor concerning the nature of his past problems with the Commission, which included findings that he had been central to applications found to have attempted fraud on the Commission.” TIBS, 12 FCC Rcd at 2256.

Ultimately, the Commission concluded that serious character questions remained as to Parker/TIBS, citing Religious. *Id.* at 2257. However, the Commission did not set forth what issue or issues it would have to resolve before TIBS could be found qualified. In the Norwell Letter, the only apparent reference to Parker’s alleged deceit is the following.

“In 1993, Shurberg Broadcasting of Hartford, Inc. (“Shurberg”) filed a petition to deny the Hartford assignment application alleging, *inter alia*, that Parker misrepresented facts and lacked candor in connection with various Commission filings over a number of years.”

However, the Norwell Letter later observed that no allegations had been raised by any party in connection with the Norwell assignment and that the misconduct alleged did not appear to have involved the operation of the Norwell station. Further, the Norwell Letter

noted that no Commission decision had limited the transferability of any stations commonly held by Parker. Accordingly, the Norwell Letter allowed the sale of the station, notwithstanding the allegations raised against Parker in another proceeding. However, contrary to RBI's implicit contention, it did not rule upon the merits of Shurberg's petition to deny. Finally, with respect to the HDO, there is no discussion, much less a resolution, of the allegations contained in the Adams Motion. Thus, neither TIBS nor the Norwell Letter nor the HDO precludes consideration in this proceeding of Parker's alleged deceit, which includes representations made in an application to transfer control of the Reading license. Cf. Atlantic Broadcasting Company (WUST) et al., 5 FCC 2d 717, 720 (1966) (When a question has been thoroughly considered by the Commission, subordinate officials are expected to follow the Commission's judgment as the law of the case. A different conclusion is justified with respect to a particular matter that has not been fully considered.).

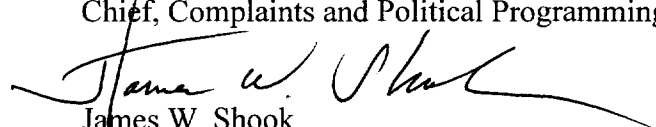
15. Accordingly, the Bureau opposes grant of RBI's Request.

Respectfully submitted,

Roy J. Stewart
Chief, Mass Media Bureau



Norman Goldstein
Chief, Complaints and Political Programming Branch



James W. Shook
Attorney

Federal Communications Commission
445 12th Street, S.W., Room 3-A463
Washington, D.C. 20554
(202) 418-1430

November 3, 1999

CERTIFICATE OF SERVICE

Karen Richardson, secretary of the Mass Media Bureau's Enforcement Division certifies that she has on this 3rd day of November, 1999, sent by first class United States mail (or by hand) copies of the foregoing "Mass Media Bureau's Opposition to Request for Permission to File Appeal" to:

Thomas J. Hutton, Esquire
Holland & Knight, L.L.P.
2100 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20037-3202

Harry F. Cole, Esquire
Bechtel & Cole, Chartered
1901 L Street, N.W., Suite 250
Washington, D.C. 20036

Administrative Law Judge Richard L. Sippel (by hand)
Federal Communications Commission
445 12th Street, S.W., Room 1-C864
Washington, D.C. 20054


Karen Richardson